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Washington, D.C. 20530

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MEMORANDUM TO THE ATTORNEY GENERAL

FROM: The Solicitor General

RHTB

SUBJECT: Recommendations Regarding the  
Martin Luther King, Jr. Matter

What follows are my thoughts on the recommendations made by Mr. Pottinger concerning the review of the FBI's actions with respect to Dr. Martin Luther King, Jr. They are necessarily somewhat impromptu and made without any knowledge other than that derived from reading the memoranda you forwarded.

1. The Department ought to press this investigation to a conclusion as rapidly as possible consistent with the necessity for thoroughness. That means, I think, that the attorneys now working on the review should be kept in place but their numbers ought to be augmented. Perhaps some experienced and able attorneys from other divisions should be drafted for the task, and perhaps some from Mike Shaheen's office.

We ought not appoint a whole new group which would have to retrace work already done. For this reason, I recommend against the appointment of an Advisory Committee. Such a committee would have to begin afresh and would have to hire its own staff, since persons of the requisite stature could not be expected to devote six months and probably more to reading files and conducting interviews. Counting necessary start up time for such a group, I suspect using this device would delay conclusion of the review for over a year. There are, moreover, obvious risks to privacy. Finally, I think the Department should demonstrate its ability to cleanse itself.

2. The question of the statute of limitations should be researched. If there was a conspiracy and an element of the conspiracy was its concealment, the statute may not have started running until public disclosures were made.

3. The subject of the destruction of tapes, transcripts, and information that have no or only tenuous relation to a proper law enforcement function puzzles me. At a minimum, and quite aside from technical questions of statutes mentioned in your memorandum, the King family should be consulted. It would be most unfortunate if we were charged with the destruction of evidence. More troublesome is the problem of other persons whose rights were violated in the course of the surveillance of Dr. King. Should we destroy the tapes, etc., such persons could claim that we had destroyed evidence which showed the liability of the government or individuals within the government to them. On the other hand, notifying such persons of the violation of their rights might trigger law suits that would result in publicity and further damage to the privacy interests of the King family. The existence of these surveillances has already been publicized and will be publicized again when the Department makes a public report. It may be worth considering whether such publicity does not provide sufficient notice to persons who dealt with Dr. King so that it would be proper to retain the tapes, etc., only until the various statutes of limitations on civil actions have run out.

4. The question of disciplinary action against agents not at the policy-making level should be addressed by the augmented group of attorneys that completes the review. Do the new guidelines instruct an agent how to report the matter if he is instructed to do an illegal act?

5. Compensation to King's survivors seems in order. Stan Pottinger's memorandum suggests that they would sue us and win but for the fear of further bad publicity concerning the information that was unlawfully acquired. If so, we ought not accept a shield that exists only because of official misconduct. The decision as to the appropriate amount of compensation should be deferred until the review is complete and you know the facts.

CC: Mr. Pottinger